

The Honorable Jamal N. Whitehead

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MAKAH INDIAN TRIBE,

Plaintiff,

v.

EXXON MOBIL CORPORATION,
EXXONMOBIL OIL CORPORATION, BP
P.L.C., BP AMERICA INC., CHEVRON
CORPORATION, CHEVRON USA, INC.,
SHELL PLC, SHELL OIL COMPANY,
CONOCOPHILLIPS, CONOCOPHILLIPS
COMPANY, PHILLIPS 66, and PHILLIPS 66
COMPANY,

Defendants.

Case No. 2:24-cv-157

**STIPULATED MOTION AND ORDER
REGARDING BRIEFING SCHEDULE**

Noted for February 9, 2024

RECITALS

Plaintiff, the Makah Indian Tribe (“Plaintiff”), and Defendants BP America Inc., Chevron Corporation, Chevron U.S.A. Inc., Exxon Mobil Corp., ExxonMobil Oil Corporation, Shell Oil Company, ConocoPhillips, ConocoPhillips Company, Phillips 66, and Phillips 66 Company, (collectively, “Defendants”) (Plaintiff and Defendants are collectively referred to herein as “the Parties”), hereby stipulate and agree to the following schedule for briefing of Plaintiff’s anticipated motion to remand, and Defendants’ anticipated motions to dismiss.

WHEREAS, on December 20, 2023, Plaintiff filed a complaint against 12 Defendants¹ in the Superior Court of the State of Washington in and for the County of King, No. 23-2-25216-1-SEA;

WHEREAS, on February 6, 2024, Defendants Chevron Corporation and Chevron U.S.A. Inc., with the consent of all properly named and served Defendants, timely removed this action from the Superior Court to this Court;

WHEREAS, Plaintiff intends to file a Motion to Remand, which Defendants intend to oppose;

WHEREAS, Defendants also intend to file threshold motions, including, but not limited to, Motions to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6), and certain Defendants object to the exercise of personal jurisdiction, and intend to file Motions to Dismiss pursuant to Fed. R. Civ. P. 12(b)(2), 12(b)(4), and/or 12(b)(5) (collectively “Motions to Dismiss”);

WHEREAS, the Parties agree it would be more efficient for the Parties and the Court for Defendants to file Motions to Dismiss or other responses to the Complaint after Plaintiff files a Motion to Remand and the Court enters an Order finally resolving any such motion;

¹ In addition to the Defendants signing this stipulation, the complaint also names foreign entities BP p.l.c. and Shell p.l.c., which Plaintiff represents were served with the summons and complaint on February 9, 2024, as defendants. Plaintiff agrees that BP p.l.c.’s and Shell p.l.c.’s deadlines shall be no earlier than the deadlines applicable to Defendants set forth herein.

WHEREAS, the Parties recognize that the Court may not be able to enter an order reflecting the below stipulated briefing schedule before Defendants' current deadline to respond to the Complaint, and the Parties therefore agree to abide by the terms of this Stipulated Motion irrespective of whether the Court is able to act before that time;

WHEREAS, this Stipulated Motion does not operate as an admission of any factual allegation or legal conclusion and is submitted subject to and without waiver of any right, defense, affirmative defense, claim, or objection, including lack of subject matter jurisdiction, or lack of personal jurisdiction, insufficient process, or insufficient service of process;

NOW THEREFORE, the Parties hereby agree and stipulate, and respectfully move the Court to enter an order, as follows:

2. No Defendant is required to file an Answer or Motion to Dismiss or otherwise respond to the Complaint before the Court's order on Plaintiff's Motion to Remand.

1 3. If the Court denies Plaintiff's Motion to Remand, the Defendants will file any Motions
2 to Dismiss within 60 days of an Order denying the Motion to Remand. The Parties will also promptly
3 meet and confer regarding an appropriate briefing schedule and plan for Oppositions and Replies and
4 page limits for Motions to Dismiss briefing and will endeavor to jointly submit a proposal to the Court
5 within 10 days of the Court's order denying Plaintiff's Motion to Remand. If the Parties are not able
6 to agree on a proposed briefing schedule, they will submit separate proposals to the Court.
7

8 4. In the event the Court denies Defendants' Motions to Dismiss, in whole or in part, De-
9 fendants' answers shall be due within 60 days of the Court's denial of the last of the Motions.

10 5. If the Court grants Plaintiff's Motion to Remand, the Parties agree to abide by the same
11 schedule in state court: Defendants will file any Motions to Dismiss within 60 days of the action being
12 remanded to state court, and the Parties will promptly meet and confer and endeavor to propose a
13 briefing schedule and plan for those motions within 10 days of the remand order taking effect.
14

15 6. Defendants reserve the right to seek an extension of time to respond to the Complaint
16 and the Parties reserve the right to request that the Court stay proceedings.

17 7. The deadline to serve Rule 26(a) Initial Disclosures and the issuance of a Rule 16(b)
18 Scheduling Order shall be stayed until after the Court has ruled on the Motion to Remand.

19 8. Defendants do not, by agreeing to the procedures herein to have the Court consider and
20 adjudicate the Motion to Remand prior to any further proceedings, waive their objections to personal
21 jurisdiction, insufficient process, or insufficient service of process. Plaintiff agrees that it will not assert
22 in federal or state court that there has been any waiver of personal jurisdiction because of the Parties'
23 agreement to have the Court consider and adjudicate the Motion to Remand prior to the filing of Mo-
24 tions to Dismiss.
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9. The deadlines of foreign defendants BP p.l.c. and Shell p.l.c. to file an Answer or Motion to Dismiss or otherwise respond to the Complaint shall be no earlier than the deadlines applicable to Defendants set forth herein.

Counsel certifies that this memorandum contains 978 words, in compliance with the Local Civil Rules.

Dated February 9, 2024.

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ORDER

For the reasons above, and finding good cause, the Court hereby grants the Parties' stipulated motion. It is so ordered.



Jamal N. Whitehead
United States District Judge